UNITED STATES
v.
PERRY L. JONES
CHET C. SMITH

IBLA 81-761 Decided September 23, 1982

Appeal from decision of Administrative Law Judge E. Kendall Clarke, declaring 10 lode mining claims and a millsite claim null and void. Contests CA 6265 and CA 6126.

Affirmed.

1. Administrative Procedure: Generally -- Administrative Procedure: Administrative Law Judges -- Administrative Procedure: Decisions

   Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

2. Administrative Procedure: Administrative Law Judges -- Administrative Procedure: Burden of Proof -- Administrative Procedure: Substantial Evidence

   In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

3. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

   The discovery of a valuable mineral deposit is essential to a valid claim.

Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

4. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

5. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

6. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a

valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

7. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

8. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

9. Millsites: Generally -- Millsites: Determination of Validity

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling

purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

10. Millsites: Generally -- Millsites: Determination of Validity -- Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Discovery

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

APPEARANCES: H. Roger McPike, Esq., San Francisco, California, for appellants; Wilbur W. Jennings, Esq., Regional Attorney, U.S. Department of Agriculture, San Francisco, California, for the Government.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Perry L. Jones and Chet C. Smith appeal from the May 15, 1981, decision of Administrative Law Judge E. Kendall Clarke declaring 10 quartz lode mining claims, North Butte Bar No. 1, North Butte Bar No. 2, North Butte Bar No. 3, North Butte Bar No. 4, North Butte Bar No. 5, Shangri-La, Shangri-La No. 1, Shangri-La No. 2, My-Veda, My-Veda No. 2, 1/ and the Thunderbird Development Company millsite claim 2/ all null and void.

The California State Office, Bureau of Land Management (BLM), initiated these contest proceedings, CA 6126 and CA 6265, on behalf of the United States Forest Service, Department of Agriculture, on July 13 and July 31, 1979, respectively. The complaint concerning the mining claims charged, inter alia, that "minerals have not been found within the limits of the claim in sufficient quantity, quality, and value to constitute a valid

1/ The quartz lode mining claims are situated in the S 1/2 of sec. 35, T. 23 N., R. 8 E, Mount Diablo meridian, Plumas County, California.
2/ The Thunderbird Development Company millsite claim is situated in a portion of the SW 1/4 SW 1/4 of sec. 35, T. 23 N., R. 8 E, Mount Diablo meridian, Plumas County, California.

discovery," and that "the land embraced within the claim is nonmineral in character." The complaint concerning the millsite claim charged, inter alia, that "the land involved is not being used or occupied for mining or milling purposes in connection with a lode mining claim, nor does it contain a quartz mill or reduction works."

Appellants timely answered the contest complaints, denied the charges, and alleged the mining claims to be highly mineral in character, containing gold and other valuable minerals. Appellants also alleged that at the date of location and all times thereafter the millsite claim was being used and occupied for mining and milling purposes in connection with lode mining claims, and that equipment and other items related to the use and occupation of the claim for the purposes of a quartz mill or reduction works have from time to time been, or are now, located on said site.

Hearings were held in Quincy, California, on October 21, 22, and 23, 1980, and on November 18, 19, 20, 1980, before Judge R. M. Steiner who retired January 9, 1981, for medical disability. Judge E. Kendall Clarke was then assigned to write the decision. Judge Clarke concluded from the record that contestant had made a prima facie case that the 10 mining claims were invalid for lack of a discovery, and the millsite claim was invalid because it was not being used for millsite purposes, and that appellants had failed to submit preponderating evidence to overcome the Government's presentation.

On appeal, appellants proffer several arguments. They allege that they were denied procedural due process because the decision was rendered by an Administrative Law Judge who did not hear the case and who did not hold a de novo hearing; that Judge Clarke should have disqualified himself pursuant to 43 CFR 4.27(c) because of his personal relationship with Henry W. Jones, the Government mineral examiner; that the Government did not permit appellant to prepare his discovery points for examination or to accompany the mineral examiner during the examination of claims; that the Government did not establish a prima facie case of invalidity for the North Butte Bar No. 3 claim because it did not sample the discovery point or any other place on the claim; that the Government did not establish a prima facie case of invalidity for the other lode mining claims because it failed to sample either the discovery points or any other place on the claims in a manner that would permit representative samples to be obtained; that the Government's prima facie case of invalidity of the millsite claim is contrary to the record, as well as the law; and that appellants presented a preponderance of the evidence to indicate a valid discovery existed at all times.

Appellants initially allege they were denied due process because the decision was written without a de novo hearing by Administrative Law Judge E. Kendall Clarke who did not hear the case.

[1] The Administrative Procedure Act, 5 U.S.C. § 554(c) (1976), provides that an officer who presides at an administrative hearing shall make the recommended decision or initial decision unless he becomes unavailable. Retirement has been interpreted to constitute unavailability. Gamble-Skogmo, Inc. v. Federal Trade Commission, 211 F.2d 106 (1954). Substitution of personnel occurring at the close of the administrative hearing does not render

invalid a decision or order based on the hearing. Gamble-Skogmo, Inc. v. Federal Trade Commission, supra. The principle which should govern substitution of hearing officers is the simple one that demeanor of witnesses should not be lost from the case. Davis, Administrative Law Treatise § 17.17 (2d ed. 1979). When demeanor matters, a reviewing court will set aside an order which does not take it into account. Gamble-Skogmo, Inc. v. Federal Trade Commission, supra. But substitution is freely allowed when demeanor is not involved. New England Coalition v. United States Nuclear Regulatory Commission, 582 F.2d 87, 100 (1st Cir. 1978); Appalachian Power Co. v. Federal Power Commission, 328 F.2d 237 (4th Cir. 1964). Here, Judge Steiner became unavailable due to retirement. Hence, the substitution of Judge Clarke was necessary, appropriate, and in accordance with the statute.

The decision in this case was based primarily on the evidence and not the demeanor of witnesses. Thus, it was not necessary for Judge Clarke to observe their demeanor at a de novo hearing. The record was sufficient. Therefore, a de novo hearing to allow Judge Clarke to observe the witnesses' demeanor was unnecessary and his decision rendered without it was proper.

Appellants argue that Judge Clarke should have disqualified himself pursuant to 43 CFR 4.27(c) because of his personal bias in a matter where the credibility of Henry W. Jones, the Government mineral examiner, was in dispute. They allege he "rendered a decision which totally ignored the serious challenge to the credibility and integrity of the witness" and that Judge Clarke had a "long and close personal friendship, and early professional relationship" with witness Jones. Appellants' Statement of Reasons in Support of Appeal and Opening Brief at 25.

[2] In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. That was not made in the present cases. An assumption that an Administrative Law Judge might be predisposed in favor of the Government is not sufficient. Converse v. Udall, 262 F. Supp. 583 (D. Ore. 1966), aff'd on other grounds, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); United States ex rel. De Luca v. O'Rourke, 213 F.2d 759, 763 (8th Cir. 1954); United States v. Leroy S. Johnson, 39 IBLA 337 (1979). Appellants, here, did not proffer a substantial showing of personal bias on the part of Judge Clarke. Therefore, their allegations of personal bias are insufficient to justify disqualification of Judge Clarke or to have his decision set aside.

Appellants argue that the Government did not establish a prima facie case of invalidity for any of the mining claims because the Government witness failed to sample either the discovery points or any other place on the claims in a manner that would permit representative samples to be obtained. They specifically allege that the Government failed to examine the North Butte Bar No. 3 mining claim and that such was admitted during the hearing (November Transcript (N. Tr.) 83).

[3] Before discussing the evidence, it will be useful to set forth applicable principles. The discovery of a valuable mineral deposit is the sine qua non for a valid claim. Under the "prudent man test," first enunciated in Castle v. Womble, 19 L.D. 455, 457 (1894), and cited with approbation

in Chrisman v. Miller, 197 U.S. 313, 322 (1905), in order to qualify as a valuable mineral deposit, the deposit must be of such character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine." See also Cole v. Ralph, 252 U.S. 286, 299 (1919); Cameron v. United States, 252 U.S. 450, 456 (1919); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); United States v. Williams, 65 IBLA 34 (1982); United States v. Imperial Gold, Inc., 64 IBLA 241 (1982).

[4] The "marketability test" is a logical complement to the "prudent man test." It requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine. United States v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, supra.

[5] A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit. United States v. Williams, supra; United States v. Imperial Gold, Inc., supra; United States v. Montapert, 63 IBLA 35 (1982).

[6] Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made and does not exist within the boundaries of the claim; the mining claimant has the ultimate burden to rebut the prima facie case by establishing the presence of a valuable mineral deposit by a preponderance of the evidence. United States v. Zweifel, 508 F.2d 1105 (10th Cir. 1975); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Williams, supra. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

[7] A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore, or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. United States v. Downs, 61 IBLA 251 (1982); United States v. Burns, 38 IBLA 97 (1978); United States v. Fisher, 37 IBLA 80 (1978); see also United States v. Zweifel, supra. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner. United States v. Downs, supra; United States v. Smith, 54 IBLA 12 (1981); United States v. Timm, 36 IBLA 316 (1978).

[8] Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present or prospective value for mining

purposes. United States v. Melluzzo, 38 IBLA 214, 85 I.D. 441 (1978); United States v. Kingdom, 36 IBLA 11 (1978); United States v. Garula, A-29948 (June 3, 1964); United States v. Josephine Lode Mining & Development Co., A-27090 (May 11, 1955).

[9] A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. United States v. Baden, 44 IBLA 253 (1979); United States v. Rukke, 32 IBLA 155 (1977). A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite. United States v. Campbell, 59 IBLA 261 (1981).

[10] Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market. United States v. Kuretich, 54 IBLA 124 (1981); Andrew J. Van Derpoel, 33 IBLA 248 (1978).

The Government's prima facie case primarily consisted of the testimony of the United States Forest Service mineral examiner, Henry Jones, who examined all the claims in September 1978 and August 1980, and took various samples which were assayed at the Metallurgical Laboratories, Inc., San Francisco, California. 3/ From the assay reports and his examinations, Jones stated

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3/ The assay report prepared by Metallurgical Laboratories, Inc., San Francisco, California, dated Oct. 9, 1978 (Contestant's Exh. 17), disclosed the following values for gold and silver:

	"Gold, Per Ton	Silver, Per Ton
Sample Mark	Troy Ounces	Troy Ounces
AFS 3657	0.002	0.02
3658	0.002	0.02
3659	0.005	0.03
3660	Trace	0.02
3661	Trace	0.04
3662	0.002	0.08
3663	0.024	0.01
3664	0.004	0.01
3665	0.002	0.01
3666	Trace	0.01
3667	Trace	0.01
3668	Trace	0.01
3669	0.006	0.02
3670	0.002	0.01
3671	Trace	Trace
3672	0.002	0.01
3673	0.003	0.01"

that "he does not believe the claims can be developed economically since there are insufficient amounts of quality grade material exposed." Decision at 4.

The final portion of the Government's case was provided by Emmett Ball. Judge Clarke summarized his testimony as follows:

> Mr. Emmett Ball, a mining engineer for the U.S. Forest Service, was called to testify on behalf of the Government. He has examined hundreds of mining claims over the years with the Government. (N.T. [November Transcript] 369). On August 18, 1980, he inspected the subject mining claims with Mr. Henry Jones. In Mr. Ball's opinion, a prudent man would not be justified in developing the North Butte Bar #1 claim. (N.T. 373). Mr. Ball stated that there has been no proof that there are enough specimen ores to produce a paying mine. He would do further exploratory work to block out the worthwhile ore. (N.T. 375). More sampling should be carried out along the dike on the North Butte Bar #1 to see if it does extend.

(Decision at 9-10).

The record indicates, however, that there was a discrepancy in Henry Jones' testimony regarding the place where he took the sample AFS-3661. He originally testified that he took the sample from the place specified on the notice of location for the North Butte Bar No. 3 mining claim (October Transcript (O. Tr.) 644-49). But he later changed the boundary on this sketch map, after reviewing the aerial photographs and admitted that he probably did not sample on the claim (N. Tr. 83).

Appellant proffered samples and testimony from several witnesses. The first was Melvin C. Stinson, a geologist for the State of California, who visited the claim with Perry Jones in 1957. They removed some samples from a stope, but Stinson does not remember where (O. Tr. 23). He also observed gold along the wall in one of the caves on the claims (O. Tr. 38). The gold he observed he believes to be of the same quality as the samples he and Perry Jones removed (O. Tr. 39). He felt that the mine was worthy of more work (O. Tr. 39). Stinson had previously examined samples given to him by Perry Jones which were said to be from the Little Ness workings (North Butte Bar No. 1 claim) (O. Tr. 37). He guessed them to be very high grade containing a couple thousand ounces of silver and 40 ounces of gold (O. Tr. 33). He believes a prudent man would invest his time and resources in developing the mine (O. Tr. 43). However, he has no idea as to the mining costs of extracting minerals from the claim (O. Tr. 89).

Another of appellants' expert witnesses, Dr. Adolph Pabst, inspected the Little Nell workings on the North Butte Bar No. 1 claim. He saw specimens of brannerite, a mineral containing gold and uranium (O. Tr. 115), but made no systematic sampling of the workings to determine whether the values extended throughout (O. Tr. 118).

Richard D. Rodell, a self-professed rock hound, visited the claim at various times over the past 15 years (O. Tr. 532). In 1971, he saw some

free gold sticking to the walls of the stopes (O. Tr. 534). He has dredged and recovered gold from the Feather River, but has seen no signs of recent surface development (O. Tr. 549).

Steve Zentner, a mining consultant and former mineral examiner for BLM, was the expert principal witness who, along with Perry Jones, comprised the appellants' case in chief. He examined the Little Nell workings on the North Butte Bar No. 1, the Shangri-La, and the North Butte Bar No. 5 (N. Tr. 131-32). The other claims did not have discovery points exposed for examination (N. Tr. 141). Thus, he could not form an opinion as to their validity. However, he found the Shangri-La and the North Butte Bar No. 5 to be invalid and the North Butte Bar No. 1 to be valid. He believes the albite dike on the claim contains gold and found a sample which produced 2.29 ounces of gold per ton (N. Tr. 143), another which produced .12 ounces of gold per ton, and a third of little value (N. Tr. 144). All samples were taken to and assayed at the Union Assay Office in Salt Lake City, Utah (N. Tr. 152). There were, however, samples containing minute amounts of gold that in his opinion probably did not qualify as specimen grade (N. Tr. 163). Mr. Zentner testified that he believed that a profitable mine could be presently made on the North Butte Bar No. 1 for a small two-man operation without further exploration and that heap leaching would be the best method of mining (N. Tr. 147). He estimated that there could be as little as 3,500 tons or as much as 6,000 tons of material that can be heap leached from the albite dike on the North Butte Bar No. 1 (N. Tr. 209).

Perry Jones, appellant, testified on his own behalf. Judge Clarke summarized the pertinent portion of his testimony as follows:

> Mr. Perry L. Jones, one of the mining claimants, testified the claims are on the north side of the middle fork of the Feather River. Access is by a trail three and a half miles long. (Tr. 570). He believes that claims are valuable for rare earths. (Tr. 574). There are also traces of gold there. (Tr. 575). He currently is looking for better mineral values on the claims. (Tr. 580). He believes there is a shear zone containing high grade quartz and gold in the Feather River on the Shangri-La claim. (Tr. 593). He traded some gold recovered from the river on the Shangri-La claim. (Tr. 611). However, he has recovered very little placer gold from the Shangri-La #1. (Tr. 619). Mineral values on the Shangri-La #2 were similar to those revealed in Government sample AFS-3671. (Tr. 623). Additional prospecting work did not produce promising values. (Tr. 624). Grab samples taken from the My-Veda claim were too poor to have assayed. (Tr. 627). Samples from the My-Veda #1 revealed no visible gold but some mineralization. (Tr. 631). No significant amounts of gold were recovered and sold from the North Butte Bar #2. (Tr. 644). An unknown amount of gold was recovered from the North Butte Bar #5. The North Butte Bar #1 is worth developing further. (N.T. 8).

> The millsite is about five acres in size. (N.T. 15). It is located on non-mineral land. He has been living on the millsite which contains all the mining equipment. (N.T. 16). The distance between the millsite and the North Butte Bar #1 claim is about a mile over sheer, rocky terrain. It might take three hours to get from the millsite to the claims. (N.T. 21). You must ford the Feather River to get to the claims. (N.T. 22). The millsite is a storage area for the mining equipment. (N.T. 29). Some gravel has been processed on the millsite.

(Decision at 6-7).

> Perry L. Jones was recalled and he stated he has been involved in mining since 1934. (N.T. 233). He located the claims for gold and uranium. (N.T. 235). He has extensive experience in mining. (N.T. 237). He has purchased a complete milling plant and this equipment is stored on his patented property. (N.T. 240). Several samples from the Little Nell stope produced gold values of 77.53 ounces and 22.77 ounces per ton. (N.T. 261, Ex. Y-1). Another assay from crushed ore from the albite dike on the North Butte Bar #1, revealed gold at 76.19 ounces per ton. (N.T. 263). Mr. Jones believes the claims are valid because there is heavy mineralization through that district. (N.T. 198). All the claims should be further developed. (N.T. 299). The North Butte Bar #1, the Shangri-La and the North Butte Bar #5 would be developed into a productive mine. He has the mill that could be used on the Thunderbird Development Company millsite. Miners have lived on the millsite. There is some mining equipment there. (N.T. 300).

(Decision at 9).

Judge Clarke determined that the government established a prima facie case that the 10 lode mining claims and one millsite claim are invalid. He stated that surveys and mineral samples from the 10 lode claims indicate negligible amounts of gold and silver and very little mining activity was found on them, and that there was no milling or processing equipment on the millsite claim and whatever equipment was there was inoperable.

We affirm Judge Clarke's decision. We find that the Government established a prima facie case of no discovery for all the mining claims.

Judge Clarke determined that appellants failed to submit evidence to rebut the Government's case. The evidence and testimony submitted on only three claims, the North Butte Bar No. 1, North Butte Bar No. 5, and the Shangri-La, was insufficient. Appellants submitted no evidence for the remainder of the claims. Since appellants failed to establish a discovery of a valuable mineral deposit on any of the claims at the time of the withdrawal, June 2, 1970, 35 FR 4219, the claims are declared null and void.

If the contestees believe the Government failed to present a prima facie case of no discovery, the contestees by timely motion may move to have

the case dismissed and then rest. If the Judge agrees and accepts such a motion to dismiss, such dismissal would be proper because there was no prima facie case making an evidentiary basis for an order of invalidity by lack of discovery, and no other evidence in the record to support the charges in the complaint. Cf., United States v. Winters, 2 IBLA 329, 339, 78 I.D. 193, 197 (1971). On the other hand, if the contestees go forward, even after filing a motion to dismiss, and present evidence, that evidence must be considered with its probative value. So even if the Government has failed to make a satisfactory prima facie case of no discovery, or if its case is weak, evidence presented by the contestees which supports the Government's contest charges may be used against the contestees, regardless of any defects in the Government's case. United States v. Arizona Mining and Refining Co., 27 IBLA 99 (1976); United States v. Taylor, 19 IBLA 9 (1975).

Accordingly, we find that all of the claims named in Contest CA 6126 are invalid on the grounds established by the Government's prima facie case, and which contestees failed to rebut, and the millsite named in contest CA 6265 is invalid for the reasons set forth in the charges of the contest complaint.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Will A. Irwin
Administrative Judge